

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YORKSHIRE TOWERS COMPANY, L.P. and
YORKSHIRE TOWERS TENANTS ASSOCIATION,

13 – CV - 1757 (JMF)

Plaintiffs,

ECF Case

-against-

UNITED STATES DEPARTMENT OF
TRANSPORTATION, RAY LAHOOD, in his capacity
as Secretary of the United States Department of
Transportation, FEDERAL TRANSIT
ADMINISTRATION, PETER M. ROGOFF, in his
capacity as Administrator of the Federal Transit
Administration, METROPOLITAN
TRANSPORTATION AUTHORITY, FERNANDO J.
FERRER, in his capacity as Acting Chairman of the
Metropolitan Transportation Authority, NEW YORK
CITY TRANSIT AUTHORITY, THOMAS F.
PRENDERGAST, JR., in his capacity as the President of
the New York City Transit Authority and
METROPOLITAN TRANSPORTATION AUTHORITY
CAPITAL CONSTRUCTION COMPANY, MICHAEL
HORODNICEANU, in his capacity as President of
the Metropolitan Transportation Authority Capital
Construction Company,

Defendants.

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DECLARATION OF WILLIAM J. STRUTH, R.A., A.I.A.
IN SUPPORT OF PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION
(5 of 7)

William J. Struth, declares the following:

1. I have over 27 years of experience as a New York Registered Architect, and am a principal in the architectural and engineering firm of Lawless & Mangione.¹ One of my areas of expertise includes preparing design and related documents for compliance with New York City's Façade Inspection and Safety Program ("FISP") (1 RCNY 103-04 "Period Inspection of Exterior Walls and Appurtenances of Buildings"), which was previously known as Local Law 11 of 1998.

2. Yorkshire Towers is a 21-story, 698-unit apartment building consisting of two residential towers spanning the entire length of Second Avenue between 86th and 87th Streets. It contains over 690,000 square feet of floor area. Yorkshire Towers is three times as large as a typical apartment building in the City of New York and is the single largest residential building impacted by the Second Avenue Subway Project with over 2,000 residents ("SAS"). The main entrance to the building is located on north side of 86th Street east of Second Avenue at 305-315 East 86th Street.

3. There is an extensive ongoing building-wide repair project at Yorkshire Towers being conducted to comply with FISP. The FISP program requires that buildings be inspected and repaired as needed every 5 years. If conditions are found, they must be repaired immediately. Furthermore, items to be repaired that are listed in an FISP Report must be completed before the next cycle report is filed. Otherwise, the building must be classified as Unsafe. Generally, aside from exposure to third party liability claims, the sanctions that a building faces from the City of New York for being classified as unsafe include fines assessed monthly and, ultimately, imprisonment under Title 28, Article 203 of the New York City Construction Code, and the following New York City Department of Buildings, Environmental Control Board infraction

¹ The firm's website appears at www.archeng.com/index.html.

codes: B102 (Failure to maintain building in code compliant manner); B204 (Failure to maintain building walls or appurtenances); B227 (Failure to file amended report acceptable to this Department indicating correction of unsafe conditions); and B230 (Failure to submit a required report of critical examination documenting condition of exterior walls and appurtenances).

4. The repairs currently being conducted are to address the work items set forth in the filed 7th Cycle FISP report. In addition to the items listed in the 7th Cycle report, we have recently uncovered, beginning in August 2012, significant deterioration of the balconies that must be repaired immediately.

5. The scope of work for the current repair project consists of masonry parapet replacements, shelf angle repairs, consisting of removing and replacing brick masonry and installing new shelf angle flashings, masonry crack repairs, replacement of the original deteriorated railings at the parapets and replacement of the original deteriorated railings at the balconies. The replacement of the railings entails removal of the metal covers at the slab edges and minor concrete repair work to accommodate the new rail posts. As soon as the façade repairs and railing replacements are completed, the building will undergo terrace roof replacements at most of the terraces. All of the façade and railing replacement repairs are being conducted by swing stage scaffolding. Swing stage scaffolding consists of a work platform suspended by steel cables from the top of the building. Swing stage scaffolding uses electric motors to run up and down the steel cables to access the façade from top to bottom. Safety regulations limit the amount of workmen on a swing stage scaffold to two workmen, and one inspector may also ride on the scaffold when work is not being conducted. Safety regulations further provide that the individual scaffold platforms can work on only one location at a time for the entire 21-story façade of Yorkshire Towers (OSHA 29 C.F.R. § 1926.451).

6. A sidewalk shed has been erected spanning the entire approximately 300 feet length of the 86th Street side of the Yorkshire Towers where its main entrance is located, in accordance with Chapter 33 of the Building Code of the City of New York. In addition, a Site Safety Plan has been filed and approved in accordance with Chapter 1 of Title 28 of the Administrative Code, and a Site Safety Manager has been retained and is on-site for the entire duration of the construction project in accordance Chapter 4 of Title 28 of the Administrative Code. New York City administers Title 28 of the Administrative Code through the BEST Squad. The Site Safety Plan must be approved by the BEST Squad before a Building Permit can be issued. The sidewalk shed cannot be removed until the work is complete and the Site Safety Manager and the BEST Squad of the City of New York approves its removal.

7. The design of the repairs began in 2011 and the project was bid out and then filed with the Department of Buildings on March 12, 2012. The plans were approved on April 11, 2012 and a permit was issued on September 11, 2012 after the Site Safety Plan was reviewed and approved by the BEST Squad.

8. The Work was originally scheduled to be completed by approximately February 2013, weather permitting. The Owner directed the Contractor to conduct all repairs at the 86th Street side main entrance to Yorkshire Towers first to minimize disruption and inconvenience to the building's over 2,000 residents, many of whom are elderly or have young children. Shortly after the work was started for the removal of the existing railings and metal slab edge covers, as noted above, we discovered significant deterioration to the concrete slab edges that had been concealed by the metal covers. This deterioration consists of loose chunks of concrete that were being concealed by the covers, and cracked concrete and significant rusting of the steel reinforcement at the slab edges. The underlying cause of all the deterioration to the concrete is

rusting of the steel reinforcement, which when it rusts, expands and breaks the concrete. The repair for this condition is to expose all of the rusted steel reinforcement at the slab edge, clean repair or replace it and install new concrete patching mortar. The repair will be then completed by the application of a protective waterproofing coating to the top side of the balconies to prevent the water infiltration that started the chain of events that resulted in the loose concrete.

9. The repairs to the concrete balcony edges now entail full restoration of the entire perimeter of the balconies, and then coating of the top sides. This work is weather dependent and must be conducted when the weather temperature is 40 degrees and rising. In the case of the coating the temperature of the substrate (the concrete balconies) must be at least 40 degrees (American Concrete Institute Standard: 306R-10: Guide to Cold Weather Concreting). Typically, during the winter, the substrate never reaches the 40 degree threshold when the overnight temperatures have been at or near freezing due to the amount of time it takes for the exposed concrete slab to warm up from being exposed to the sun.

10. As discussed above, the repairs are being conducted from swing stage scaffolding, so only two workmen can perform repairs to a balcony at one time on a scaffold drop. The scaffolds cannot be used to transport additional work men to balconies, and there is no access from the interior. Furthermore, even if work men could physically be placed on more than one balcony at a time to make repairs, it would be dangerous to do so because falling debris, tools, or material could injure or kill a workman below.

11. Work has begun at the first of eight, separate vertical balcony lines extending up to each of the floors of the two residential towers for the 21-story building. This requires erection of a sidewalk shed for the entire approximately 300-foot length of the East 86th Street side of Yorkshire Towers and involves 168 separate apartments. The contractor estimates that, weather

permitting, the work will take about eight weeks per balcony line, assuming 100% tenant cooperation and access to secure each balcony safely during the mandated repair work, including clearance of tenant property or unauthorized improvements from their balconies. This presents a substantial scheduling contingency for completion of required FISP work. Assuming the Owner does not receive cooperation or voluntary compliance in this regard with any number of tenants in the very large subject residential apartment complex that is Yorkshire Towers, the Owner will be forced to commence legal proceedings.

12. Further, the work by the contractor for the expanded scope of work is extensive, because it includes the installation of new railings and coating of the concrete.

13. After speaking with the Owner and Contractor, given the greatly expanded scope of safety work required under FISP, because of the deterioration of the concrete balconies, anticipated work stoppages due to winter work, the substantial scheduling contingency in obtaining court orders required to access and secure balconies from any of the tenants in the 168 affected apartments, and the additional time required to enforce them, the best conservative timeline for completion at this point is at least over another year and a half in the third or fourth quarter of 2014.

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14. The cut and cover and other preliminary construction relating to it for the building of an excavation wall in front of Yorkshire Towers that the MTA has planned regarding building two entrances on the sidewalk in front of Yorkshire Towers directly interferes and conflicts with ongoing mandated FISP project. For the reasons discussed above, there are and will continue to be sidewalk sheds required by FISP well into 2014, overlapping the same site on the north side of 86th Street in front of Yorkshire Towers where the MTA has planned to commence its cut and cover and other preliminary construction for the agency's two-entrance scheme.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: New York, New York
February 23, 2013



William J. Struth